

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

1:18-CV-24227-CMA-Altonaga

JASON MILLER,)
)
Plaintiff,)
)
vs.)
)
GIZMODO MEDIA GROUP, LLC, et al.,)
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Defendants.)
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DEFENDANTS' UNCONTESTED MOTION TO FILE INFORMATION DESIGNATED
BY PLAINTIFF AS CONFIDENTIAL UNDER SEAL
AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Local Rule 5.4 and this Court's Confidentiality Order (D.E. 100), Defendants, Gizmodo Media Group, LLC and Katherine Krueger ("Defendants"), hereby move this Court for an Order permitting the filing of information designated by Plaintiff as "confidential" under seal in support of Defendants' forthcoming Motion for Summary Judgment. As grounds for this Motion, Defendants state as follows:

On March 28, 2019, this Court entered a Confidentiality Order, which permits the parties to designate Discovery Material, including deposition testimony, as "Confidential" if the material contains commercially sensitive or otherwise confidential information. (D.E. 100 at ¶ 2). The Confidentiality Order also states a party shall not file "Discovery Material designated as 'Confidential' . . . unless there is an agreement of the parties or an order of the Court, which shall be in compliance with Southern District of Florida Local Rule 5.4." *Id.* at ¶ 7. Importantly, the Confidentiality Order provides that no part of it is "to be construed as to supersede the

requirements and procedures in Local Rule 5.4.” *Id.*

Pursuant to the Confidentiality Order, Plaintiff’s counsel has designated certain testimony within the depositions of Plaintiff, Kelly Miller,¹ Arlene Delgado² and Lawrence Carnevale³ as “Confidential.” Defendants intend to file their Motion for Summary Judgment on June 27, 2019 (the dispositive motion deadline), and they have incorporated some of the designated testimony into the Motion. They also intend to attach and file the pages of the deposition transcripts containing the designated testimony as Exhibits to their Motion.

To be clear, Defendants do not agree with Plaintiff’s counsel’s designation of all of this testimony as “Confidential,” and Defendants do not intend to waive their objections to the designations through this Motion. However, Plaintiff’s designations require Defendants to file these materials under seal. (D.E. 100). In order for a party to file information or documents under seal in accordance with Local Rule 5.4, the party must first file “a motion to file under seal that . . . describes the information or documents to be sealed (the ‘proposed sealed material’) with as much particularity as possible, but without attaching or revealing the content of the proposed sealed material.” Local Rule 5.4(b)(1). The party may not file the proposed sealed material unless and until the court grants the motion. *Id.* Importantly, if the party is required to publicly file a motion or memorandum that attaches or reveals the content of the proposed sealed material, then the party must redact from the public filing all content that is the subject of the motion to file under seal. *Id.*

Accordingly, pursuant to Local Rule 5.4(b)(1), the proposed sealed materials at issue are the following pages of the deposition transcripts of Plaintiff, Kelly Miller, Arlene Delgado and

¹ Kelly Miller is Plaintiff’s wife.

² Arlene Delgado is the author of the Supplement upon which the Article reported.

³ Lawrence Carnevale is the General Counsel of Teneo, Plaintiff’s most recent employer.

Lawrence Carnevale:⁴

Plaintiff: 36 – 37, 93 – 95, 106, 108, 115, 117 -118, 125 - 126, 128, 138 – 139, 141, 143, 145, 147 – 151, 160 – 161, 169 – 171, 193, and 195. In these excerpts, Plaintiff discusses his relationship with Arlene Delgado, his marriage to Kelly Miller, and how they affected each other. In one instance, he discusses the source of his income while he worked on President Trump’s campaign.

Kelly Miller: 26, 29 - 31. In these excerpts, Mrs. Miller generally discusses her marriage to Plaintiff.

Arlene Delgado: 124, 133 – 137, 140 – 141, 145 – 147, 162, 179, and 193. In these excerpts, Ms. Delgado discusses her relationship with Plaintiff and certain encounters with him.

Lawrence Carnevale: 152. In this excerpt, Mr. Carnevale discusses Plaintiff’s compensation at Teneo.

Defendants’ Motion for Summary Judgment relies heavily on the designated testimony. If Defendants are required to redact the designated testimony that has been incorporated into their Motion and/or are not permitted to attach the deposition transcripts as Exhibits to the Motion, much of the Motion will become unreadable and incomprehensible. Accordingly, Defendants respectfully request that this Court rule on the instant Motion as soon as possible, so that Defendants may file their Motion and Exhibits without redaction prior to the dispositive motion deadline.

⁴ Defendants apologize for the late filing of this motion. However, Plaintiff’s timeframe to designate deposition portions confidential has not yet expired in some cases. Plaintiff’s counsel has cooperated in reviewing those pages pertinent to the summary judgment motion in advance of those deadlines and this afternoon provided to us the page numbers we needed to complete this motion.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant this Motion and allow them to file their Motion for Summary Judgment and accompanying Exhibits, portions of which have been designated by Plaintiff as “Confidential,” under seal until such time as this Court may determine the propriety of Plaintiff’s designations.⁵

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), counsel for Defendants conferred with counsel for Plaintiff regarding the relief requested herein. Counsel for Plaintiff agrees on the affirmative resolution of this Motion.

Respectfully submitted,

Dated: June 26, 2019

Elizabeth A. McNamara

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⁵ Defendants intend to challenge these designations at a hearing scheduled before Judge Goodman on June 28, 2019.

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2019, a true and correct copy of the foregoing has been served by CM/ECF on all counsel or parties of record on the service list.

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